IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7423 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARATBHAI DHIRENDRABHAI THAKAR

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UDAY BHATT, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. Commissioner of Police, Rajkot City, Rajkot, passed an order on June 10, 2000, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Bharatbhai Dhirenbhai Thakar

under the provisions of the said Act.

2. The detaining authority took into consideration three offences registered against the petitioner under the Bombay Prohibition Act. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Ms. Patel, learned advocate appearing for the petitioner, has restricted her arguments to the ground that by representation dated the 26th June, 2000, certain documents were demanded by the detenu from the State Government. The said representation is rejected by the State Government by communication dated the 10th July, 2000. This non-supply of document has resulted into infringement of the right of the detenu of making an effective representation under Article 22(5) of the Constitution and his continued detention, therefore, is bad in law. In support of her contention, Ms. Patel produces the communication rejecting the representation, which is taken on record. She, therefore, submitted that the petition may be allowed.

4. Mr. Uday Bhatt, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that by a representation dated the 26th June, 2000, certain documents were demanded by the detenu. However, the said representation came to be rejected by the State Government on the 10th July, 2000. Mr. Bhatt, upon instructions and after consulting the file, has conceded to this factual aspect. Thus, the non-supply of the documents has resulted into infringement of the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution. Therefore, the continued detention of the detenu is bad and the petition deserves to be allowed on this ground also.

8. In the result, the petition is allowed. The impugned order of detention dated June 10, 2000, passed against the detenu is hereby quashed. The

detenu-Bharatbhai Dhirenbhai Thakar is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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